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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE

Office: Vermont Service Center

Date: 11 APR 2002

IN RE: Applicant:

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

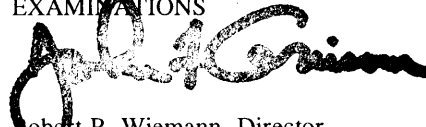
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Guatemala who attempted to procure admission into the United States on February 28, 1991, by fraud when he presented a Guatemalan passport belonging to another person. On June 27, 1991, he was ordered excluded from the United States by an immigration judge *in absentia* under former sections 212(a)(14), (19), and (20) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(14), (19), and (20), for having sought to enter the United States for the purpose of performing labor without certification from the Secretary of Labor, for having sought to procure admission into the United States by fraud, and for being an immigrant without a valid visa or lieu document. The applicant failed to depart. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. 1182(a)(9)(A)(ii).

The applicant is married to a native and citizen of Guatemala who is also present in the United States without a lawful admission or parole. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to rejoin his parents and sister.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, the applicant states that he is not a criminal, is a person of good moral character, and a petition for alien relative was filed in behalf of his wife before April 30, 2001, which means he is covered under section 245(i) of the LIFE Act (the Legal Immigration Family Equity Act). The applicant requests that his application be reconsidered as he has been in the United States for 11 years and it would be an extreme hardship to have to return to Guatemala.

The Legal Immigration Family Equity Act (LIFE Act) was enacted on December 21, 2000. Applicants are subject to the following requirements.

First, an alien must prove that he or she, before October 1, 2000, filed a written claim with the Attorney General for class membership in the CSS, LULAC, or Zambrano legalization class action lawsuits in order to be considered an eligible alien for adjustment to LPR status under LIFE Legalization. Applicants who were denied class membership in the CSS, LULAC, or Zambrano legalization class action lawsuits by the Service are still eligible to apply for adjustment of status under LIFE Legalization.

Second, an eligible alien must then submit evidence to establish the following five requirements--that he or she

- (1) Properly files an application for adjustment of status under LIFE Legalization;
- (2) Entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988;
- (3) Was continuously physically present in the United States during the period from November 6, 1986, through May 4, 1988;
- (4) Is not inadmissible to the United States for permanent residence under any provisions of the Act; and
- (5) Establishes basic citizenship skills as required.

The applicant has failed to provide evidence that he has satisfied the requirements of items (1), (2), and (3) listed above.

8 C.F.R. 103.5(a)(2) provides that a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. 103.5(a)(3) provides that a motion to reconsider must state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

8 C.F.R. 103.5(a)(4) provides that a motion which does not meet applicable requirements shall be dismissed.

The issues regarding the applicant's good moral character, absence of a criminal record, and hardship have been raised and addressed in previous decisions and need not be revisited on motion. Since no new issues have been presented for consideration, the motion will be dismissed.

ORDER: The motion is dismissed. The order of December 21, 2001, dismissing the appeal is affirmed.